

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

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| Application of Wisconsin Energy Corporation | ) |                         |
| for Approval of a Transaction by which      | ) |                         |
| Wisconsin Energy Corporation Would Acquire  | ) | Docket No.: 9400-YO-100 |
| All of the Outstanding Common Stock of      | ) |                         |
| Integrus Energy Group, Inc.                 | ) |                         |

**REBUTTAL TESTIMONY OF  
ALLEN L. LEVERETT IN SUPPORT OF APPLICATION  
BY WISCONSIN ENERGY CORPORATION**

- 1 Q. Please state your name, business address, and title.
- 2 A. My name is Allen L. Leverett. My business address is 231 West Michigan Street,
- 3 Milwaukee, Wisconsin 53203. I am the President of Wisconsin Energy Corporation
- 4 (“WEC”).
- 5 Q. What are your duties in your position as President of WEC?
- 6 A. I have overall responsibility for WEC’s electric generation portfolio, fuel procurement,
- 7 environmental compliance and renewable energy development strategy. Together with
- 8 WEC’s Chief Executive Officer, I set overall direction and strategy for the company.
- 9 I also serve on the board of directors for ATC Management Inc., which is the corporate
- 10 manager of American Transmission Company LLC. I have responsibility for oversight
- 11 of WEC’s investment in ATC.
- 12 Q. Did you previously file direct testimony on behalf of WEC in this docket?
- 13 A. No.
- 14 Q. What is the purpose of your rebuttal testimony in this proceeding?

1 A. My rebuttal testimony presents WEC's positions on several of the merger conditions  
2 proposed by Staff and Intervenors in their direct testimony. Specifically, I will be  
3 responding to proposed conditions concerning ATC ownership and voting rights; the  
4 various proposals concerning "most favored nation" status for Wisconsin; integrated  
5 resource planning and proposed conditions related to Wisconsin Public Service  
6 Corporation's proposal to add a third unit ("Fox 3") at its Fox Energy Center; employee  
7 headcount conditions; the various proposals that WEC write off all or a portion of its  
8 transmission escrow balance; and certain rate design conditions proposed by Jobs4WI.  
9 WEC witness Scott Lauber's Ex.-WEC-Lauber-4 lists all of the conditions proposed by  
10 Staff and Intervenors and summarizes WEC's response to each proposed condition.

11 Q. Before you address individual proposed conditions, do you have any general comments  
12 regarding the conditions?

13 A. Yes. As can be seen by looking at Ex.-WEC-Lauber-4, we are quite willing to accept  
14 many of the proposed conditions outright. A number of other conditions we can accept,  
15 provided some clarification is provided. And there are several conditions which we  
16 cannot accept but for which we are proposing alternative conditions which address the  
17 same area of concern.

18 Consequently, there are only a few proposed conditions that we simply cannot accept at  
19 all. These fall into two categories. In one category are proposed conditions that appear  
20 to be based on the mistaken notion that the transaction offers no benefits to customers  
21 unless the Commission in effect creates benefits by ordering bill credits, writing off  
22 escrow balances, or similar devices.

1 The second category of unacceptable conditions have nothing to do with the merits of the  
2 proposed transaction but are simply being offered in an attempt to re-litigate issues  
3 already resolved in other proceedings, including Wisconsin Electric's and Wisconsin  
4 Gas's recently decided rate case.

5 Q. Which of the proposed conditions would you like to address first?

6 A. I would like to talk about the various proposed conditions relating to ATC ownership and  
7 voting rights. On Ex.-WEC-Lauber-4, these proposed conditions are listed as items 19  
8 through 31.

9 Q. Please proceed.

10 A. The conditions that Staff and intervenors are proposing regarding ATC are completely  
11 unnecessary and the Commission should not adopt them.

12 As WEC explained in its application in this docket, WEC and Integrys highly value the  
13 independent and collaborative manner in which ATC has planned and managed the  
14 transmission network in Wisconsin and the Upper Peninsula of Michigan and have no  
15 desire to exert additional influence over the management, operations, or planning  
16 activities of ATC. That is why -- in our application to this Commission and in our  
17 application for FERC approval of the transaction -- we proposed restrictions on the  
18 ability of the combined company to vote its ATC ownership interest post merger. As a  
19 result of our proposal, the combined company will have the same influence that Integrys  
20 does today on matters affecting the management operations or planning activities of  
21 ATC. Thanks to our proposed restriction on the combined company's voting power the  
22 other owners -- the owners unaffiliated with the combined company -- effectively will  
23 vote the ATC Management shares that the combined company owns but does not vote

1 independently. The result is that control of ATC will be *more* distributed after the  
2 combination of WEC and Integrys than it is today.

3 Q. Would you please restate and perhaps clarify the ATC voting restrictions that WEC  
4 proposed in its application to the PSCW and at FERC?

5 A. Certainly. The voting restrictions we have proposed are as follows:

- 6 1. Other than on “fundamental matters” as described below,  
7 the combined company will not independently vote, or  
8 consent with respect to, in excess of 34.07% of the member  
9 interests or shares of ATC LLC or ATC Management, Inc.,  
10 as applicable, and all other member interests and shares  
11 held by the combined company will be voted, or consented  
12 with respect to, in proportion to the way in which ATC  
13 Management and ATC LLC’s shareholders and members  
14 who are not affiliated with the combined company vote or  
15 consent their respective shares and member interests.
- 16 2. The fundamental corporate matters on which the combined  
17 company would propose to maintain its full voting power  
18 in ATC LLC and ATC Management would be limited to  
19 the following matters (in each case, only to the extent that  
20 the governing documents of ATC LLC or ATC  
21 Management or applicable law require the vote or consent  
22 of the members or shareholders, as applicable): (a) the sale  
23 of substantially all of the assets of ATC LLC or ATC

1 Management; (b) the merger, consolidation or share  
2 exchange of ATC LLC or ATC Management; (c)  
3 amendments to ATC LLC's or ATC Management's  
4 governing documents that would disproportionately and  
5 adversely affect the combined company's express rights as  
6 a member or shareholder relative to the other members and  
7 shareholders of ATC LLC or ATC Management; (d)  
8 bankruptcy of ATC LLC or ATC Management; and (e) an  
9 initial public offering of either ATC Management or ATC  
10 LLC. In no case will WEC or the combined company use  
11 its voting power in ATC LLC or ATC Management to  
12 initiate a fundamental matter or otherwise seek or propose  
13 to amend the governing documents of ATC LLC or ATC  
14 Management to provide voting or consent rights with  
15 respect to a matter that does not currently require a member  
16 or shareholder vote or consent.

17 Q. Do you believe that the voting restrictions you have proposed and have restated and  
18 clarified in this testimony adequately address legitimate concerns regarding the combined  
19 company's ownership interest in ATC?

20 A. Yes. No owner of ATC, other than GLU, has raised these kinds of issues. Consequently,  
21 the Commission should reject the various ATC-related conditions proposed by Staff and  
22 intervenors.

1 Q. Other than offering the voting restrictions in WEC's application and reiterating that  
2 commitment and elaborating on it here, what steps might be taken to put it into effect?

3 A. As we said in our application, we have proposed the voting restrictions as part of our  
4 filing at FERC seeking approval of the transaction, and we have asked FERC to include  
5 the restriction as a condition in any order they issue approving the transaction.

6 Q. Would WEC agree to the PSCW including a similar condition in any order it issues  
7 approving the transaction?

8 A. Yes. As with FERC, WEC would support a PSCW-imposed condition binding us to the  
9 commitment I have articulated above. However, WEC would not agree to accept any of  
10 the ATC-related conditions offered by Staff and intervenors in their direct testimony.

11 Q. It has been suggested, for example by Staff witness Mr. Pilo, that a majority ownership  
12 stake in ATC is prohibited by Wis. Stat. § 196.485, the statute dealing with ATC  
13 formation and governance. According to Mr. Pilo, ATC was originally organized so that  
14 "no single entity was a majority owner of ATC capable of 'reaching in' and exercising  
15 any vertical market power abuse through means that simple RTO membership and RTO  
16 oversight might not prevent." (Direct-PSC-Pilo-11) Mr. Pilo asserts that "the ATC-  
17 enabling legislation was constructed where no one entity would be expected to be a  
18 permanent majority owner of ATC." (Id. at 12) What is your response to this  
19 suggestion?

20 A. Like Mr. Pilo, I am not a lawyer. However, I have been a board member of ATC since  
21 2005. I consider myself to have a fairly extensive knowledge of ATC's history and  
22 governance. It is my understanding that the legislation that facilitated ATC's formation,  
23 1999 Wisconsin Act 9, which became § 196.485, did not, and does not, prohibit a

1 majority owner of ATC. Indeed, as Mr. Pilo acknowledges (Direct-PSC-Pilo-11, note 2),  
2 immediately upon formation of ATC WEC owned 51%. The statute did not require  
3 investor-owned utilities to join ATC by transferring their transmission assets to the new  
4 company. Instead, the statute provided transmission owners with an option to voluntarily  
5 join ATC in exchange for relief from the Wisconsin Utility Holding Company Act's limit  
6 on the ownership of non-utility assets. In other words, if an investor-owned utility  
7 ("IOU") joined ATC, its parent holding company would no longer be subject to the non-  
8 utility "asset cap" under the Holding Company Act.

9 Mr. Pilo's testimony ignores this important fact that membership in ATC was voluntary,  
10 and therefore it was by no means a foregone conclusion that there would not be a  
11 majority owner. Two IOUs, Northern States Power-Wisconsin and Superior Water, Light  
12 and Power, did not join ATC at formation. In addition, after ATC was formed, Alliant  
13 transferred its Iowa transmission facilities to ITC, not ATC. Had Alliant not transferred  
14 its Wisconsin transmission facilities to ATC, WEC's initial ATC ownership share would  
15 have been over 60%. This may have been unlikely, given Alliant's interest in asset cap  
16 relief at the time; my point is that the legislation that enabled ATC's formation did not  
17 assume the lack of a majority owner and it certainly did not prohibit a majority owner.

18 Q. Mr. Pilo asserts that the Commission approved ATC's formation with a majority owner  
19 only because it understood that WPSC would be contributing its Arrowhead-Weston  
20 transmission project and that would reduce WEC's ownership to a minority position:  
21 "With this understanding, ATC has technically had for a period of time a majority owner,  
22 but the expectation was clearly that with the WPSC Arrowhead-Weston project folded in,

1 a majority situation would not sustain, and it has not.” (Direct-PSC-Pilo-11, note 2).

2 Does Mr. Pilo substantiate this “clear expectation”?

3 A. No, he does not. In its order approving ATC’s formation, the Commission expressed no  
4 concern whatsoever about WEC’s majority ownership and made no mention of WPSC’s  
5 future contribution of the Arrowhead-Weston project. Nor does the order indicate that  
6 any concerns about WEC’s majority ownership were raised by any of the parties to the  
7 proceeding.

8 Q. Was it possible for there to be a majority owner of ATC even after WPSC contributed the  
9 Arrowhead-Weston project?

10 A. Yes. ATC was initially formed as a closely-held limited liability company managed by a  
11 corporate manager. The members were prohibited from selling their ownership interests  
12 in the first three years of operation, except for sales to other members. After the first  
13 three years, however, a member could sell its interests as long as no more than 50% of  
14 the total ownership in ATC was sold in a 12-month period. Transfers of ownership  
15 among members in the first three years and other transfers of ownership after the first  
16 three years could very well have resulted in a majority owner.

17 In addition, ATC’s initial method of raising capital was (and remains) through capital  
18 calls to its owners. *These capital calls are voluntary.* If a member decides not to  
19 contribute its pro rata share of the capital call, then the other members have the right to  
20 make the contribution in accordance with their ownership shares. Obviously, if and to  
21 the extent members chose not to participate in capital calls, their ownership shares would  
22 fall and the shares of participating owners would rise. This process could have resulted  
23 in the creation of a majority owner of ATC.



1 Q. Is the lack of a majority owner necessary for ATC to fulfill its statutory purpose, as set  
2 forth in Wis. Stat. § 196.485 (1)(ge), of “planning, constructing, operating, maintaining  
3 and expanding of transmission facilities, and the providing of transmission service, to  
4 provide for an adequate and reliable transmission system that meets the needs of all users  
5 that are dependent on the transmission system and that supports effective competition in  
6 energy markets without favoring any market participant”?

7 A. Obviously, no. The Commission approved ATC’s formation in 2001 with a majority  
8 owner. At that time, MISO did not have a FERC-approved Open Access Transmission  
9 Tariff, a transmission expansion planning process, transmission cost allocation standards,  
10 or energy market structure. Today, MISO is a fully functional Independent System  
11 Operator that regulates the generation and transmission markets in which ATC and its  
12 owners participate. Even if the existence of a majority owner was a concern in 2001 (and  
13 it does not appear there was such a concern) it is even less of a concern in 2015. ATC’s  
14 ability to fulfill its statutory purpose, even with a majority owner, is even stronger today  
15 with a fully functioning Independent System Operator that regulates the generation and  
16 transmission markets in which ATC and its owners participate.

17 Q. Mr. Pilo argues that the Commission should consider measures to restrict WEC’s  
18 ownership of ATC, which he says would be “a departure from the environment that  
19 allowed the creation of ATC.” Do you agree?

20 A. No. It is Mr. Pilo’s proposal that would constitute a radical departure from the  
21 framework the Legislature put in place for ATC. As I’ve already discussed, neither the  
22 legislation that facilitated ATC’s formation nor the Commission’s order approving  
23 ATC’s formation restricted ownership in ATC by any individual entity. Mr. Pilo also

1 ignores the fact that ATC's ownership and control structure was fundamentally changed  
2 in 2011 with the expiration of certain statutory provisions governing membership of its  
3 board of directors and the "conversion" of ownership interests under the Commission-  
4 approved ATC formation documents.

5 At ATC's formation each of the IOUs that contributed their transmission assets to ATC,  
6 as well as WPPI, held a single "Class B" share of voting stock in the corporate manager,  
7 ATC Management Inc. During the first 10 years of ATC's operation, the election of the  
8 corporate manager's board of directors and other shareholder matters were voted on by  
9 the holders of the Class B shares. All entities that transferred their transmission assets  
10 also had a number of non-voting "Class A" shares proportional to their ownership share.

11 A "conversion" was built into the Commission-approved ATC formation documents to  
12 occur on the 10-year anniversary of formation, absent a vote by the board of directors to  
13 postpone the conversion. At the conversion, the Class B shares were to be converted into  
14 Class A shares and the Class A shares were to be converted into voting shares. The  
15 conversion occurred on December 29, 2010, as scheduled, and placed the overall control  
16 of ATC (i.e., the right to elect the corporate manager's board of directors and vote on  
17 other matters subject to a vote of the shareholders) directly in proportion to ownership.  
18 In doing so, the conversion increased the liquidity of ATC ownership interests and the  
19 potential for a majority owner of ATC through the same sorts of stock transactions that  
20 can occur with any investor owned company.

21 Finally, I would point out that ATC's ownership is already highly concentrated. IOUs  
22 own 88%, with Integrys having the largest individual share of 34.07%. Integrys, with the  
23 agreement of either WEC (23.04%) or Alliant (16.38%), could today exercise control

1 over matters subject to shareholder voting. GLU witness Dr. Lowry expresses concern  
2 over the concentration of ownership of ATC in “private companies with power  
3 generation capacity in [their] footprint.” (Direct-GLU-Lowry-7) WEC’s acquisition of a  
4 majority ownership share in ATC does not affect this situation one way or another. In  
5 fact, as a result of the voting restrictions set forth above, on all but fundamental corporate  
6 matters, the investor owned utilities would have considerably *less* voting power than they  
7 do today, and the other owners would have considerably *more*. Taking just one example,  
8 WPPI Energy has 6.69% voting rights today, and after the transaction will have 11.10%  
9 voting rights.

10 Q. Do you agree with Mr. Pilo that WEC’s ownership of 60% of ATC “essentially amounts  
11 to the recreation of a vertically-integrated company with a complicated, likely redundant  
12 management structure that begs the question of whether a new VITO should just be  
13 created” (Direct-PSC-Pilo-13)?

14 A. No. Mr. Pilo completely ignores ATC’s development over nearly fifteen years into a  
15 fully functional and independent transmission owner regulated by MISO and FERC. At  
16 formation, ATC was substantially dependent on its owners for the development of  
17 operational guidelines and even the owners’ employees to perform operation and  
18 maintenance functions. That is no longer the case. Over time, ATC has developed its  
19 own resources and now operates on a day-to-day basis *entirely independent* of its owners.  
20 In its dealings with the owners as transmission or generation market participants, FERC  
21 standards of conduct strictly prohibit ATC from giving its owners preference or sharing  
22 market-sensitive information with them.

1 Q. Ms. Hubert of Staff expresses concern about the combined company's "formal" and  
2 "informal" influence over ATC, even if WEC's voting power is limited as WEC has  
3 proposed. (Direct-PSC-Hubert-23) GLU witnesses Mr. Kothari (Direct-GLU-Kothari-  
4 5-6) and Dr. Lowry (Direct-GLU-Lowry-8-9) express similar concerns. Is the combined  
5 company's ability to influence ATC a valid basis to deny approval of or condition the  
6 proposed transaction?

7 A. No. Staff's and GLU's proposals to restrict the combined company's exercise of its  
8 majority ownership (beyond the commitment WEC has already made) and to reserve  
9 board seats for minority owners are completely inconsistent with the terms and conditions  
10 on which ATC was formed. The economic positions of all ATC owners are protected by  
11 the company's governing documents.

12 In addition, an owner's ability to influence ATC's planning and construction activities is  
13 limited. These activities are governed by MISO's regional planning process, which  
14 determines which projects proceed and how their costs are allocated. MISO's  
15 transparent, stakeholder-driven planning process thoroughly mitigates the ability of a  
16 majority owner of ATC to "reach in" and exercise control over ATC's transmission  
17 expansion plan for the owner's own ends.

18 Q. Dr. Lowry expresses a concern that ATC "would place a relatively low priority on  
19 increasing capacity to receive low-cost power from facilities to the west of its footprint,  
20 including low-cost wind and hydro power." (Direct-GLU-Lowry-7) Has this in fact  
21 occurred?

22 A. Not to my knowledge. In fact, one could argue that importing lower cost power from the  
23 west is a primary purpose of the \$540 million Badger Coulee 345 kV project currently

1 sponsored by ATC and Xcel. No supposed bias in favor of its generation-owning IOU  
2 owners prevented ATC from pursuing this project.

3 Q. Is the MISO transmission planning process also capable of determining that a  
4 transmission project proposed by a transmission owner is not needed?

5 A. Yes. During MISO's 2012 transmission planning process, ATC proposed a 115-mile  
6 \$570 million kV line from the Green Bay area to the Upper Peninsula of Michigan. After  
7 input from stakeholders, MISO evaluated the project and determined that a smaller  
8 project at half the cost would satisfy the reliability and market needs of the networks.

9 Q. Which of the proposed conditions would you like to address next?

10 A. I will address Staff's, CUB's and WIEG's proposed conditions relating to "most favored  
11 nation" status for Wisconsin (items 32 through 35 of Ex.-WEC-Lauber-4). In our view,  
12 these conditions are both unneeded and unjustified. The record in this proceeding is very  
13 well developed and Staff and numerous intervenors have all provided extensive proposed  
14 conditions. The likelihood that a material condition has been somehow overlooked is  
15 slim. Further, there is a danger of a standoff between various states waiting to give final  
16 approval for the transaction until each has seen what the other has done. Moreover,  
17 under Wisconsin law, the Commission can reopen the docket if some unique condition is  
18 adopted in another state that is feasible to implement in Wisconsin and would benefit  
19 Wisconsin customers. Therefore, we urge the Commission to reject the various "most  
20 favored nation" proposals that have been advanced in this docket.

21 Q. What conditions will you address next?

1 A. I will address three conditions proposed by Staff, CUB and WIEG pertaining to  
2 integrated resource planning and the Fox Energy Center. These proposed conditions  
3 appear as items 47 through 49 of Ex.-WEC-Lauber-4.

4 Q. What is WEC's response to Staff- and intervenor-proposed conditions relating to  
5 WPSC's anticipated application to build a new natural gas-fired power plant known as  
6 Fox Energy Center 3?

7 A. Mr. Detmer's testimony acknowledges that significant customer benefits may be possible  
8 through some form of joint resource planning by Wisconsin Electric Power Company and  
9 WPSC once they have combined. That possibility is, of course, consistent with what  
10 WEC said in its application in this docket:

11 "[L]onger-term resource planning based on the combined  
12 companies' larger generation portfolio and more extensive  
13 geographic footprint may reveal opportunities to economize  
14 that are not available to the stand-alone companies."

15 WEC finds acceptable Mr. Detmer's proposed condition that the utilities shall submit a  
16 joint resource plan based on EGEAS modeling that analyzes various generating  
17 alternatives similar to the individual utility filings recently filed with the Commission.  
18 Based on input from WEC planners, Mr. Detmer's proposal that such an integrated plan  
19 be submitted with 90 days of closing may be too ambitious. To ensure the most useful  
20 results -- and to allow for additional analysis that may be required as a result of new  
21 standards for greenhouse gases -- we would ask the Commission to allow 120 days after  
22 closing to prepare the integrated resource plan.

1 As for Fox Energy Center 3 specifically, it would not be prudent for WEC -- or the  
2 Commission -- to take a position on delaying or foregoing that project until the integrated  
3 resource plan is produced and reviewed by the Commission and interested parties.

4 Q. Are there other conditions you wish to address?

5 A. Yes. I would like to address two employee headcount-related conditions proposed by  
6 International Union of Operating Engineers - Local 420 ("Local 420"). These proposed  
7 conditions appear as items 55 and 57 of Ex.-WEC-Lauber-4.

8 Q. Please proceed.

9 A. In our Application, WEC proposed that for two years following closing of the  
10 transaction, any reduction in headcount among employees in Wisconsin who are  
11 represented by a labor union will occur only as the result of voluntary attrition or  
12 retirement. This is consistent with the motivation for the transaction -- creation of a  
13 combined company with strong cash flow that can be prudently invested in energy  
14 infrastructure, not a synergy-driven combination resulting in mass layoffs. Staff witness  
15 Lois Hubert appears to agree with this commitment, and has proposed making the two-  
16 year headcount commitment a binding condition.  
17 Local 420 has proposed extending this commitment for five years and requiring WEC to  
18 "meet and confer with Local 420 and other employee representatives in developing a  
19 post-acquisition workforce plan." I have a couple of reactions to these proposals. First,  
20 and most importantly, WEC has a positive working relationship with Local 420 and the  
21 other unions representing our employees, and we regularly consult with union leadership  
22 concerning many issues related to our workforce. However, a poorly-defined  
23 requirement to "meet and confer" regarding a "post-acquisition workforce plan" is too

1 vague for us to accept. We will continue to meet and bargain with our unions as we have  
2 in the past, but cannot agree to the “meet and confer” requirement. As for the five-year  
3 commitment, it is simply too long, and would hamstring our ability to prudently manage  
4 the company in the best interests of ratepayers and the public. A two-year commitment  
5 strikes an appropriate balance between providing certainty to represented employees and  
6 looking out for the best interests of customers, and the Commission should reject Local  
7 420’s attempt to extend that commitment.

8 Q. Which proposed condition would you like to address next?

9 A. Ms. Hubert proposes that WEC be required to submit its merger integration plans to the  
10 Commission upon development and prior to implementation. (Item 64 in Ex.-WEC-  
11 Lauber-4). The Commission should reject any such condition.

12 Q. Why?

13 A. It would constitute unprecedented and unwarranted micro-management of WEC’s  
14 business by the Commission. Obviously the Commission has a legitimate interest in  
15 the outcome of the integration process, for example its impact on customer service and  
16 any impact over time on net synergy savings. The Commission already has adequate  
17 authority under the law to monitor outcomes and to take, or require WEC to take, any  
18 needed action to address concerns that may arise. In addition, we have agreed to a  
19 number of proposed conditions which ensure that the Commission has the information it  
20 needs to monitor WEC’s performance. These include tracking costs and savings,  
21 developing an integrated resource plan, consulting with the Commission and seeking  
22 approval before merging utilities or “levelizing” rates, etc. There simply is no need for  
23 the Commission to insert itself as deeply into the integration process as Ms. Hubert’s



1 condition would entail. Such micro-management would also be contrary to long-standing  
2 Commission practice.

3 Q. Which proposed condition do you want to address next?

4 A. Staff witnesses Larson and O'Donnell propose a condition that would require bill credits  
5 for Wisconsin Gas customers, Wisconsin Electric gas operations customers, Valley steam  
6 customers, and Milwaukee County steam customers. (Item 78 in Ex.-WEC-Lauber-4).  
7 The Commission should reject this proposed condition for two reasons. First, it is  
8 unnecessary because, as we have explained, the transaction will deliver significant  
9 customer benefits without the need for ad hoc proxies like issuing bill credits. Second,  
10 all four of these entities have just finished a rate case (05-UR-107) in which the  
11 Commission set rates that it found to be just and reasonable.

12 Q. Several parties have proposed writing off all or a portion of WEPCO's transmission  
13 escrow balance (items 89 through 92 of Ex.-WEC-Lauber-4). Would WEC agree to any  
14 such condition?

15 A. No. The Commission should reject that proposal. These transmission costs were  
16 prudently incurred when Wisconsin Electric paid ATC for transmission service it  
17 received subject to FERC-approved transmission tariffs. Further, the significant  
18 transmission projects that contributed to the transmission escrow balance were all  
19 approved by the Commission. The reason these prudently incurred costs have been  
20 accumulated as an escrow balance, rather than recovered in rates as incurred, is that the  
21 Commission agreed to this approach as a way to mitigate rate increases over the last  
22 several years. To now suggest seizing those regulatory assets as a condition for  
23 approving the proposed transaction raises legal and policy issues of the first order.

1 Q. Which proposed condition would you like to address next?

2 A. The Commission should reject Jobs4WI's proposed condition regarding a high-voltage  
3 tariff. (Item 65 of Ex.-WEC-Lauber-4). This is a rate design issue that was litigated in  
4 the just-concluded proceeding 05-UR-107. The Commission rejected the proposal in that  
5 proceeding and it should reject it again in this proceeding.

6 Q. Are there any further proposed conditions you wish to address?

7 A. Yes. Jobs4WI offers two related ratemaking proposals: (1) limiting return on equity for  
8 certain assets constructed under Wisconsin's leased generation law; and (2) allocating  
9 leased generation costs to wholesale operations instead of retail operations and/or  
10 foregoing recovery of ROE and lease payments for assets that are not used and useful.  
11 These proposed conditions appear as items 5 and 6 of Ex.-WEC-Lauber-4.

12 Q. How do you respond to these proposed conditions?

13 A. There are two reasons why the Commission should reject Jobs4WI's proposal to limit the  
14 ROE on the Power the Future ("PTF") assets. First, Jobs4WI raised this proposal in the  
15 recently-concluded rate case (5-UR-107), and the Commission rejected it there. Jobs4WI  
16 has presented no more evidence supporting its position in this proceeding than it did in  
17 the rate case, and the Commission should again reject this baseless request. Second,  
18 while I am not a lawyer, my understanding is that Wisconsin's leased generation law, §  
19 196.52 (9), Wis. Stats., provides that once the Commission has approved a leased  
20 generation contract, it may not modify or terminate the contract, which includes the ROE  
21 on the leased assets, except as specified in the leased generation contract itself or in the  
22 Commission's order approving the leased generation contract. Therefore, the condition  
23 Jobs4WI seeks is beyond the Commission's authority.

1 Q. What is your response to Jobs4WI's proposed condition on allocation of leased  
2 generation costs to wholesale operations and/or exclusion from rates of leased generation  
3 facilities found not to be used and useful?

4 A. This is really two separate issues. With respect to allocation of leased generation costs to  
5 wholesale operations, this already occurs as an ordinary part of ratemaking. Each of this  
6 Commission and the Federal Energy Regulatory Commission has determined the  
7 appropriate allocation of leased generation costs to the retail and wholesale jurisdictions,  
8 respectively. As to Jobs4WI's second condition, requesting that some portion of the PTF  
9 assets should be excluded from rate base as not used and useful, under the leased  
10 generation structure established by the Legislature roughly fifteen years ago, the PTF  
11 assets are not part of utility rate base. Wisconsin Electric leases the assets pursuant to  
12 leased generation contracts approved by the Commission. As I indicated earlier, those  
13 contracts may be modified by the Commission only in extremely limited circumstances  
14 which are not present here. The leased generation law also authorizes the utility to  
15 recover in rates the payments it makes under a Commission-approved leased generation  
16 contract. So here again, Jobs4WI is asking the PSCW to do something it has no legal  
17 authority to do.

18 I should add that the PTF plants have been used increasingly as the region emerges from  
19 the recent recession. Our two new coal fired units at the Oak Creek campus performed  
20 very well during 2014, especially when they were needed the most. For example, during  
21 January 2014, right in the middle of the polar vortex, the equivalent availability factor of  
22 the two units exceeded 96%. The capacity factor for the plant in January 2014 was over  
23 76%. For the year as a whole the plant had a capacity factor of 61.7% which was more

1           than double the previous year. Together with the investments we have made in a new  
2           combined cycle gas fired facility at our Port Washington site and air quality control  
3           upgrades across our fleet, our Power the Future investments have well positioned us to  
4           meet future customer load. So, in addition to lacking a legal basis, Jobs4WI's proposal  
5           lacks a factual basis, as well.

6    Q.     Does this complete your rebuttal testimony?

7    A.     Yes